

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No.: <b>11-V-15384</b>
	)	
<b>RICHARD ALAN HOFMAN,</b>	)	<b>DECISION GRANTING PETITION FOR</b>
	)	<b>RELIEF FROM ACTUAL SUSPENSION</b>
<b>Member No. 110692,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

The issue in this matter is whether Richard Alan Hofman (petitioner) has demonstrated, to the satisfaction of this court, his rehabilitation, present fitness to practice, and present learning and ability in the general law so that he may be relieved from his actual suspension from the practice of law. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.4(c)(ii).)<sup>2</sup>

For the reasons set forth in this decision, the court finds that petitioner has shown by a preponderance of the evidence that he has satisfied the requirements of standard 1.4(c)(ii). Accordingly, the court **GRANTS** petitioner’s petition for relief from actual suspension from the practice of law.

**Significant Procedural History**

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

<sup>2</sup>All further references to standard(s) are to this source.

The verified petition in this matter was filed on August 8, 2011. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed its response on September 22, 2011. The hearing was held on October 27, 2011. The matter was taken under submission at the conclusion of the hearing.

### **Findings of Fact**

Petitioner was admitted to the practice of law in California on December 12, 1983, and has been a member of the State Bar of California at all times since that date.

### **Petitioner's Underlying Disciplinary Background**

On January 7, 2009, the Review Department of the State Bar Court issued a decision in petitioner's underlying matter, case no. 03-O-04890. This decision involved petitioner's representation of Jacqueline Navarro and her husband, Jorge, in a bankruptcy matter.

At their initial meeting, petitioner advised Mrs. Navarro that he would be filing the bankruptcy petitions soon and that she should stop paying her creditors. Soon after, Mrs. Navarro's creditors were hounding her and her bank account had been levied. Mrs. Navarro's repeated requests that petitioner provide her with the bankruptcy case number were ignored.

More than a year after she hired petitioner, he finally sent Mrs. Navarro the purported bankruptcy case number. This number, however, was a sham. In truth, petitioner had yet to file a bankruptcy petition in the Navarros' matter.

Although petitioner subsequently filed the Navarros' bankruptcy petition, he failed to timely prosecute the matter. The bankruptcy court filed an order dismissing the Navarros' case because they had not timely filed the required schedules, statements, or plan. Petitioner received a copy of that dismissal order shortly after it was filed, but did not promptly inform the Navarros about it. Instead, he filed a motion to vacate the dismissal. The bankruptcy court subsequently denied petitioner's request to vacate the dismissal.

Upon learning of the dismissal, the Navarros contacted petitioner. Petitioner misrepresented to the Navarros that the court had asked them to resubmit some documents. The Navarros lost confidence in petitioner and, ultimately, filed a complaint against him with the State Bar.

The Review Department found that petitioner's conduct violated section 6106; rule 3-110(A); section 6068, subdivision (m); rule 3-700(A)(2); and rule 3-700(D)(2). In aggravation, petitioner had two prior records of discipline. In addition, petitioner committed multiple acts of wrongdoing, caused significant harm to his clients, and lacked recognition of the seriousness of his misconduct. In mitigation, petitioner improved his office management, terminated his problematic bankruptcy practice, and performed pro bono activities.

The Review Department recommended, among other things, that petitioner be suspended from the practice of law for five years, that execution of that suspension be stayed, and that he be placed on probation for five years on condition that he be actually suspended from the practice of law for the first two years of probation. Petitioner was also ordered to pay \$4,000 in restitution to Mrs. Navarro.

The Supreme Court issued an order on October 14, 2009, affirming the Review Department's decision. Petitioner's period of actual suspension began on November 13, 2009.

On July 7, 2011, petitioner paid the final costs owed to the State Bar in the Navarro matter.

### **Rehabilitation and Present Fitness to Practice Law**

Petitioner has been a member of the State Bar since 1983. In 1989, petitioner opened a law practice, and was a solo practitioner until his suspension in 2009. Petitioner handled real estate and business litigation related to real estate matters and a general civil practice.

In 2011, petitioner was employed as a paralegal for a law firm concentrating on consumer issues. If petitioner is returned to active status as an attorney, he plans to concentrate his practice on real estate matters

Petitioner is remorseful for his misconduct in the Navarro matter and acknowledges that he not only caused harm to Navarro, but also harmed his own family and the reputation of all practicing attorneys. Petitioner realizes that he must put the client first and be customer service conscience at all times. Petitioner understands he must be honest with clients, communicate with clients in timely manner, and competently and timely perform all work for which he is retained. Since his suspension, petitioner has become more technologically adept, and will use this new information to better communicate with clients by cell phone, e-mail, and the internet.

Since his suspension, petitioner has regularly donated blood and platelets, which is important since he has a rare blood type. Petitioner has also worked with holocaust survivors and their families.

Petitioner acknowledged that he owes the Internal Revenue Service (IRS) \$229,305.68 in back taxes.<sup>3</sup> Petitioner filed his tax returns, but failed to pay all the taxes due for the tax years 1995 through 2009. In September 2011, petitioner and the IRS agreed to a repayment schedule based on his ability to pay. Petitioner has begun making \$150 monthly payments. Petitioner was always cognizant of his tax obligations, and, by filing his IRS tax returns, never sought to evade the IRS.

Petitioner faults his inability to promptly pay his federal income taxes on his failure to properly handle household finances and family costs. Two of petitioner's children were in college during this time period, and he was the primary care-giver to his father, who suffered

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<sup>3</sup> Petitioner's motion in limine to exclude evidence of petitioner's IRS tax liens is denied, no good cause having been shown.

from dementia until his death in 2008. These issues were exasperated by petitioner's wife's inability to work due to illness and injury.

Petitioner submitted declaration testimony from five witnesses, two of which are members of the State Bar. All of the witnesses have known petitioner for a significant period of time, were aware of his misconduct, and agree that he is a man of integrity. All urged petitioner's reinstatement to the practice of law.

### **Present Learning and Ability in the General Law**

Since prior to November 13, 2009, but especially thereafter, petitioner has regularly read the Daily Journal, the State Bar Journal, and legal treatises such as Mortgages, Deeds of Trust, and Foreclosure Litigation. Petitioner also joined and followed LinkedIn best practices groups relating to real estate and legal practices. He took and passed continuing education for his real estate broker's license, including ethics, and obtained a C.C.M.I. designation, representing an expertise in commercial real estate matters.

In 2011, petitioner was employed as an independent contracted paralegal by a law firm concentrating on representation of consumers. Petitioner prepares drafts of legal memorandums and pleadings. Petitioner's work is reviewed by attorney Stephen Kitagawa, who describes petitioner's work product as of exemplary quality and containing very thoughtful analysis. Petitioner works about 25 to 30 hours a week. Petitioner never meets with clients.

On June 24, 2011, petitioner completed the State Bar's Ethics School. He also took and passed the August 2010 MPRE. Petitioner has completed 25 ½ hours of continuing legal education (MCLE) credits and has earned numerous credit hours of continuing education on real estate issues.

### **Discussion**

In this proceeding, petitioner has the burden of proving by a preponderance of the evidence that he has satisfied the conditions of standard 1.4(c)(ii). The court looks to the nature of the underlying misconduct as well as the aggravating and mitigating circumstances surrounding it to determine the point from which to measure petitioner's rehabilitation, present learning and ability in the general law, and present fitness to practice before being relieved from his actual suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

To establish rehabilitation, the court must first consider the prior misconduct from which petitioner seeks to show rehabilitation. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. Second, the court must examine petitioner's actions since the imposition of his discipline to determine whether his actions, in light of the prior misconduct, sufficiently demonstrate rehabilitation by a preponderance of the evidence. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

Petitioner must show strict compliance with the terms of probation in the underlying disciplinary matter; exemplary conduct from the time of the imposition of the prior discipline; and "that the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline ... is not likely to be repeated." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

In this case, petitioner has made substantial gains in his rehabilitation process. He has recognized his misconduct and taken steps to learn strategies to prevent such misconduct from recurring. The conduct that prompted the court to initially take action was serious. Failing to perform competently for a client and being dishonest to the client are ethical lapses that cannot be taken lightly.

Petitioner has recognized his problems, and has been working toward their resolution. Although petitioner's tax debt is troublesome, the court finds that in and of itself it is not enough to deny petitioner's petition for relief from actual suspension. (See *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 468.)

### Conclusions

The court finds that petitioner has satisfied the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct and has demonstrated, by a preponderance of the evidence and to the satisfaction of the court, that he is rehabilitated, that he is presently fit to practice law and that he possesses present learning and ability in the general law.

Accordingly, the petition to be relieved from actual suspension from the practice of law is hereby **GRANTED**. Petitioner will be entitled to resume the practice of law in this state when all the following conditions have been satisfied:

1. The actual suspension imposed by the California Supreme Court in S174341, filed October 14, 2009, has expired;
2. The order has become final, which includes the expiration of the time for seeking reconsideration and review (Rules Proc. of State Bar, rules 5.115, 5.150, 5.409, and 5.410);
3. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and
4. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Dated: November 3, 2011.

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RICHARD A. PLATEL  
Judge of the State Bar Court